IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

....

:: JUDGMENT ::

Rajasthan State Road Transport Corporation Vs. Vimla Devi & Ors.

S.B.CIVIL MISC. APPEAL NO.741/2006.

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Vimla Devi & Ors. Vs. Rajasthan State Road Transport Corporation

S.B.CIVIL MISC. APPEAL NO.1530/2005.

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Against the award dated 18.11.2004 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case No.374/2004.

Date of Judgment :::: 27.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. A.S. Rathore, for the appellant in CMA No.741/2006.
Mr. J. Gehlot, for the appellants in CMA No.1530/2005
Mr. Anil Bachhawat for the respondent in CMA No.1530/2005.

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BY THE COURT:

These two appeals have been preferred respectively by the owner of the vehicle involved in the accident and the claimants against the same award dated 18.11.2004 made by the Motor Accidents Claims Tribunal, Bhilwara in Claim Case

No.374/2004 (141/2001). CMA No.1530/2005 preferred by the claimants seeking enhancement over the amount awarded by the Tribunal has of course been admitted on 09.01.2006. However, CMA No.741/2006 preferred by the owner of the vehicle has not been admitted and in view of their subject matter, both the appeals were heard together and are taken up for disposal by this common judgment.

On 02.06.2000 on National Highway No.8 near village Gunvatta the deceased Govardhan Lal Sharma while travelling in a bus bearing registration No.RJ 20/P 3280 belonging to the appellant-Rajasthan State Road Transport Corporation ('RSRTC') in his capacity as conductor sustained injuries when the bus met with an accident with a dumper bearing registration No.RJ 14/G 6557 and succumbed to injuries. The claimants, wife, children and mother of the deceased Govardhan Lal Sharma claimed compensation against the persons related with both the vehicles under Section 163-A of the Motor Vehicles Act and for quantification of compensation submitted that the deceased was about 37½ years in age and was getting salary of Rs.5,636/- per month and with over-time and part-time and agriculture work was in all earning Rs.11,136/- per month. Non-applicant No.1 driver of the bus and the non-applicants Nos.3 and 4, owner and driver of the truck were proceeded ex parte. The owner

of the bus, non-applicant No.1 submitted reply stating general denial of the claim averments but did not deny that the victim was travelling in the bus as conductor. However, it was contended that the deceased sustained injuries for his own negligence by standing near the gate of the bus and projecting his body out of the vehicle; that the deceased was earlier under suspension and in enquiry he was found guilty of indisciplined activities; that his wife was now in employment of RSRTC and she has also filed a writ petition before the High Court; and that the claim application ought to have been filed before the Workmen's Compensation Commissioner. The insurer of the vehicle, on the other hand, while stating general denial of the claim averments submitted that the accident was caused by the fault of the bus driver and that the claim was not competent under Section 163-A of the Act.

On the pleadings of the parties, following issues were framed by the Tribunal:-

> "(1) आया वि.सं.1 के स्वामित्व की बस संख्या आर.जे.20/पी. 3280 तथा वि.सं.3 के स्वामित्व एवं वि.सं.5 के यहां बीमित वाहन डम्पर आर.जे. 14 जी. 6557 को उनके चालक क्रमश: वि.सं.2 एवं 4 द्वारा चलाये जाने के कारण दुर्घटना में प्रार्थीगण के परिजन गोवर्धन लाल शर्मा की मृत्यु हुई ?
>
> प्रार्थीगण
>
> (2) आया प्रार्थीगण क्षतिपूर्ति के रूप में 21,21,511/- रूपये या अन्य कोई राशि प्राप्त करने के अधिकारी है ?
>
> प्रार्थीगण

(3) आया डम्पर चालक एवं बस चालक के पास वाहन चलाने का वैध एवं प्रभावी ड्राईविंग लाईसेंस नहीं था ?

वि.सं.05

(4) आया मृतक राज.राज्य पथ परि. निगम का नियोजित कर्मचारी होने तथा नियोजन के दौरान मृत्यु होने से नियोजक तथा बस चालक ही क्षतिपूर्ति के लिए जिम्मेदार है ?

वि.सं.05

(5) आया दुर्घटना में मृतक गोवर्धन की मृत्यु उसकी स्वयं की गलती एवं लापरवाही के कारण हुई है?

वि.सं.1

(6) आया वि.सं.1 के जवाब पैरा नं.23 में वर्णितानुसार मृतक मृत्यु से पूर्व करीब एक वर्ष तक संस्पेड रहने तथा उसके दोषी पाये जाने के कारण भी प्रार्थीगण कोई सहायता प्राप्त करने के अधिकारी नहीं है ?

वि.सं.1

(7) आया वि.सं.1 के जवाब के पैरा 24 में वर्णितानुसार मृतक गोवर्धन लाल की पत्नी श्रीमती विमला देवी वि.सं.1 के नियोजन में होने के कारण तथा उसके द्वारा रिट याचिका प्रस्तुत किये जाने के कारण यह क्लेम प्रार्थना-पत्र अधिकरण में चलने योग्य नहीं है ?

वि.सं.1

(8) अनुतोष ?"

After taking of evidence, the Tribunal observed that though the claim application was moved under Section 163-A of the Act and aspects of negligence or fault were as such not germane for such claim application, however, in view of the involvement of two vehicles, it was noticed that the

Roadways bus caused the accident by hitting the truck in question from behind while proceeding in brisk speed and not being put to brakes. Issues Nos.3 and 4 were decided against the non-applicant No.5 for want of evidence. On issues Nos.5 and 6 the Tribunal noticed from the statement of NAW-1 Badrilal that the aspects involved in the said issues were not proved by the non-applicants.

Taking up quantification of compensation, the Tribunal noticed the age of the deceased at 37 ½ years and though his income was proved above Rs.5,000/- per month from the salary certificate but with reference to the Second Schedule to the Act took his annual income at maximum Rs.40,000/- and applied a multiplier of 16 and after deducting one-third on his personal expenditure assessed pecuniary loss at Rs.4,26,667/- and allowed Rs.2,000/- towards funeral expenses, Rs.5,000/- to the wife of the deceased for loss of consortium and Rs.2,500/- towards loss of estate and, therefore, allowed total compensation in the sum of Rs.4,36,167/- and allowed interest at the rate of 6% per annum from the date of filing of claim application.

The appeal filed by the claimants against the award aforesaid has been admitted noticing the contention of the learned counsel for the appellant that the Tribunal has not considered properly the salary certificate of the deceased Ex.7

and over-time income certificate Ex.8 and that he also had agriculture income. Suffice is to say in this regard that the claim application was maintained by the claimants under Section 163-A of the Act and in view of the said provisions read with Second Schedule to the Act where compensation is claimed on structured formula basis, maximum income could be taken at Rs.40,000/- per annum and not beyond. Whatever submissions are sought to be made by the claimants turn out to be wholly irrelevant because even if any other part of the income of the deceased be taken into consideration, the present one being an application under Sec.163-A of the Act, annual income could not be taken beyond Rs.40,000/- and once the Tribunal has taken the same, there appears no illegality in quantification of compensation with application of multiplier of 16. The Tribunal has allowed other compensation as permissible under the said Schedule and the award on its quantification remains justified and calls for no interference. The appeal submitted by the claimants, therefore, deserves to be dismissed.

It may be pointed out that the case of the claimants about other source of income is even otherwise not of much assistance to them inasmuch as so far agriculture income is concerned, by its very nature the same retains itself and, therefore, cannot be considered towards substantial part of

loss to the claimants. Once it is clear that the deceased was in regular employment as a conductor with RSRTC, obviously the said agricultural income was earned by him by deployment of other agriculture labourer and the income so earned obviously remains available to the claimants. A fact has further been established on record that the wife of the deceased has been provided compassionate appointment by the appellant-RSRTC in place of her husband. In the overall circumstances of the case, the amount awarded by the Tribunal remains that of just compensation ruling out any scope of enhancement.

So far the appeal filed by the RSRTC is concerned, noticeable it is in the first place that present one being a claim application under Section 163-A of the Act and the deceased having met with his untimely end because of his being occupant of the bus of the appellant-RSRTC and because of the bus getting involved in the accident, the aspect of negligence or fault as such is not relevant for determination of compensation in this case. Secondly, having examined the evidence on record, this Court is satisfied that the accident occurred for the fault exclusively of the bus driver and the Tribunal has not been in error in fastening entire liability on the appellant.

The bus driver, Badrilal has attempted to suggest that the accident was caused by bringing the dumper in question suddenly on the main highway from down the road and by covering the lane of the bus and hitting conductor side of the bus; and that he took the bus to the divider on the other side of the road and that conductor was not on his seat else he would not have got injured. This witness turns out to be untruthful when his statement is examined with reference to the site plan Ex.2. It is noticed that the bus nearly bumped into the dumper proceeding ahead of it and then a sudden turn was taken towards right-hand side but not before the gate on the left-hand side of the bus hit against the rear of the dumper; and then the bus jumped on the road divider on its extreme right-hand side. The dumper was also thrown off-balance on receiving such a jolt at its rear and went haywire to its left-hand side and hit against the wall of a farm house. The suggestion on the part of the appellants of any contribution of the deceased in the accident or fault of the dumper driver turns out to be hollow and baseless. There appears no contribution of the deceased to his injuries; whether standing near the gate or sitting on the conductor's seat, he sustained such injuries while being at a place meant for the conductor inside the bus. It has been admitted by Badrilal in his cross-examination that there was only one gate

in the bus and that the same was closed. It has not been shown at all that the victim-conductor had projected any part of his body out of the vehicle. Situation at site and the points of impact on the body of the two vehicles show it clearly that the suggestions of the dumper having been brought suddenly on the road and having hit against the left-hand side of the bus are not correct.

In the aforesaid view of the matter, both the appeals remain wholly bereft of substance. The Tribunal has rightly examined the evidence available on record and has rightly applied the law applicable to the case and the award in question calls for no interference.

Consequently, both the appeals fail and are dismissed. No costs.

(DINESH MAHESHWARI), J.

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S.B.CIVIL MISC. APPEAL NO.1530/2005
(Vimla Devi & ors. Vs. Rajasthan State Road Transport Corporation)

Date of order : 27.10.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.J.Gehlot for the appellants
Mr.Anil Bachhawat for the respondent

Heard.

Dismissed. (vide order in S.B.Civil Misc. Appeal No.741/2006-Rajasthan State Road Transport Corporation Vs. Vimla Devi & others)

(DINESH MAHESHWARI),J.